

NEC04P018-H1a **AFTER FINAL: EXPEDITED ACTION** 01480088aa  
Amendment dated 08/26/2008 Reply to office action mailed 06/09/2008

**REMARKS**

Claims 1, 8-11, and 13 have been canceled. Claims 2-7, 12, and 14-18 are currently pending in the application. The Examiner's indication that claims 2-7, 12 and 14-18 are allowed is acknowledged with appreciation.

It is respectfully requested that the applicant's claim for foreign priority and receipt of a certified copy of the priority document be acknowledged. This application is based on Japanese patent application number 2003-082679 filed March 25, 2003.

In the amendment of August 26, 2008, which has not been entered in the case, it was proposed to change the word "data" in several claims to "rate". This appears to be more a matter of style than substance. Paragraph [0027] of the application provides clear support for "a current data detector for supplying the scheduling apparatus with the rat information..." which is recited in the claims as originally filed.

As this amendment makes no changes to the claims already identified as being allowed, the application should now be in *prima facie* condition for allowance.

In order to expedite the prosecution of this case the rejected claims are being canceled without prejudice in order to be pursued in a continuation application for at least the reasons stated below.

The Examiner has rejected now canceled claims 1, 8-11 and 13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication 2003/0108063 of Joseph et al. ("Joseph") in view of U.S. Patent No. 6,888,796 to Iizuka and U.S. Patent No. 6,529,548 to Aoki et al. ("Aoki"). Notwithstanding cancellation of these claims in order to obtain allowance of the allowed claims, this rejection is respectfully traversed.

It is noted that the Examiner has allowed all claims describing each of the five major elements common to the packet scheduling apparatus shown in Figs. 5, 6 and 7. Claims 1 and 13 describe the packet scheduling apparatus in somewhat more

summary form, but even in this form the rejected claims do not read on the teachings of the cited prior art, either separately or in combination.

The Joseph aggregates multiple DSL channels to provide improved bandwidth for users desiring both voice and IP service on the same circuits. Joseph distinguishes from the prior art (Fig. 1) by providing a Service Gateway 42 and a Premises Service Unit 43 (Figs. 2 and 3; ¶[0019]). Joseph does provide a packet scheduling algorithm, but this relates to load balancing across the aggregated multiple DSL channels. The Examiner admits that Joseph fails to describe any component in the packet scheduling apparatus that is central to the invention.

The Iizuka reference addresses the problem of controlling the transmission rate of packets, but it does so with a rate control circuit that compares the actual rate to a desired rate and then controls a packetizer accordingly, using preselected packet sizes which are made smaller or larger in order to accommodate the rate objectives. This methodology is undertaken for each receiving terminal and has no apparent relation to the technique of the present invention, which handles multiple channels having different quality requirements using a weighting system calibrated by an overhead amount correction unit driven by a current rate detection signal.

The Aoki reference includes a description of a multiplexing function, but this aspect of the invention is taken from the prior art and is not at issue. However, the claim language includes elements not included in Aoki, as detailed in the prior response, which is incorporated herein by reference.

Consequently, it is believed that the Joseph, Iizuka and Aoki references fail in combination to provide one skilled in the art with the teachings required to practice the invention as claimed in the claims now canceled without prejudice.

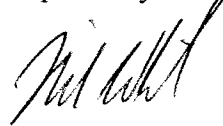
In view of the foregoing, it is requested that the application be reconsidered and the application with allowed claims 2-7, 12 and 14-18, as amended, be passed to issue.

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Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at 703-787-9400 (fax: 703-787-7557; email: mike@wcc-ip.com) to discuss any other changes deemed necessary in a telephonic or personal interview.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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